

1906-062 Chancery Causes: J. Tennessee Smyth & vs. James Smyth &
Lee Co.

Smith, Turner

1 Plat

CA-Estate Dispute
T-Property

Will: 1894: David Smyth: Lee County

To the Honorable H. A. W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining your orators, J. Tennessee Smyth, Elbert Smyth and Charles C. Smyth, would respectfully show unto your Honor that one David Smyth, a citizen of Lee County, Virginia, departed this life on or about the ____ day of _____, 1894, having first made, executed and published his last Will and Testament, by which he made disposition of all property, both real and personal, which he owned at the time of his death; that on the 16th day of April, 1894, said last Will and Testament was properly admitted to probate by the County Court of Lee County, Virginia, and said Will, together with the Order of said Court probating the same was recorded in the Clerk's Office of said County in Will Book No. ____ page ____; and a certified copy of said Will and of said order probating same, is herewith filed as a part hereof, marked "Exhibit 1".

Your Orators will further show your Honor, as will be seen from an inspection of said will that the said testator after making some small specific bequests, gave all the rest and residue of his estate, both real and personal, to his wife Margaret Smyth during her natural lifetime, or widowhood "thereafter, To James D. Smyth's children (being my grandchildren) an equal part with all the rest of my children among all of whom I wish it equally divided share and share alike between them." Your orators will now show your Honor that on the ____ day of _____, 1906, the said Margaret Smyth, the widow of the said David Smyth, departed this life, and upon her death your orators are advised that the real estate left by the said David Smyth at the time of his death, passed, by the provisions of said will, legally into the possession and enjoyment of the remaindermen named in said will.

Your orators will now show your Honor that the said David Smyth left at the time of his death eleven children, to-wit: Sarah Smyth, John Smyth, Mary J. Smyth, James Smyth, Elbert Smyth, Amanda Smyth, Alice Smyth, Dona Smyth, Charles C. Smyth, Laura Smyth and David Smyth.

Your orators will now show unto your Honor that the language of the said Will in regard to the parties to whom the said property shall go after the death of the said Margaret, is somewhat ambiguous, but your orators aver that it was the intention of the testator by the language used to devise to the children of the said James Smyth the interest which should otherwise have gone to their said father, and that the said James Smyth himself should take nothing in said property, thus giving to the said children of the said James Smyth one-eleventh, and to the other ten children of the said testator, (excluding the said James) one eleventh each. This is the construction put upon said will by all of the said children of the said testator including the said James Smyth, himself, and your orators are advised and here aver that such is the proper construction of said will.

Your orators will now show your Honor that the said testator the said David Smyth, left at the time of his death two tracts of land, lying in Lee County, Virginia, one of which contain about ___ acres and the other ___ acres, both of which tracts lie near Pennington Gap.

Your Orators will now show your Honor that the plaintiff Chas. C. Smyth is now the owner of Six-- eleventh of said lands, *for which he has deeds of conveyance and one half a* have become the owner of one share under said will, and the owner by purchase of the shares of his sisters Sarah, Donie and Amanda, and of his brothers John and David; that the plaintiff Elbert Smyth is the owner of two-elevenths of said lands, having become the owner of one share under said Will, and of one other share by purchase from his sister Mary; that the said James Smyth's children, to-wit: Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth and Esthre Smyth, are the owners of one-eleventh of said lands, under said will; that plaintiff J. Tennessee Smyth is the owner of one-eleventh of said lands, having purchased the same from the said Laura Smyth; that the heirs of Alice Smyth, she having married one _____ Turner and departed this life, leaving as her children and heirs at law Elbert Turner and Luthre Turner, are the owners of

one eleventh of which has bought but for which he has not yet obtained a conveyance

one-eleventh of said lands

Your Orators will now show your Honor that the said Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth and Esther Smyth, and Elbert Turner and Luther Turner, are infants under the age of twenty-one years.

The prayer therefore, of your orators is, that James Smyth, Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth, Esther Smyth, Elbert Turner and Luther Turner, be made parties defendant to this bill; that they be required to answer the same, but *a guardian ad litem be appointed to answer and defend for said infant defendants,* not under oath, answer under oath being expressly waived; that the Court construe said Will in accordance with the contention herein above set out; and that said lands be partitioned among the parties entitled thereto in accordance with their interest therein as hereinabove set out; and for full and complete general relief.

And they will ever pray &c.

W. K. Hopkins P.Q.

J. Tennessee Smyth et al
vs { Bill in Chy
James Smyth et al

1906 1st May Rules
Bill filed, Sp. re-
sented as to adult
defendant & D. W. as to
him

" 2nd May Rules
D. W. confirmed
Ans. G. A. B. filed &
Cause set for hearing.

Costs

Clerk	\$10.77
	15.00
Atty.	16.75
Commr.	5.00
G. A. B.	2.00
Shiff	1.50
Tax	<u>\$51.02</u>

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of
Lee County, Virginia:

The answer of Alpha Smyth, Emma Smyth, Lillie Smyth, Grover
Smyth, Dewey Smyth, Esthre Smyth, Elbert Turner and Luthre Turner,
infants under the age of twenty-one years, by Geo.P. Cridlin, their
Guardian ad litem, assigned to defend them in this cause, to a bill
of complaint exhibited against them and others by J. Tennessee Smyth
and others;

Respondents answering said bill, or so much thereof as they
are advised that it is material that they should answer the same,
answering by their said Guardian ad litem, say

That they are infants of tender years, and by reason of their
infancy are incapable of understanding or of taking care of their
rights and interests in said cause. They therefore, by their said
Guardian ad litem, commend themselves and their rights and interests
to the protection of the Court, and pray that no decree may be pro-
nounced which will tend to their prejudice.

And now having fully answered respondents pray to be hence
dismissed, with their costs.

Geo. P. Cridlin G.A.L.

Sworn to before me, by Geo.P. Cridlin, G.A.L. for infant de-
fendants, this the 19th day of May, 1906.

H. T. Ewing Clerk.

J. James Smyth et al
vs. { In Chy

James Smyth et al

G.A.L. answer

Filed in open Court
by me there of the
28th day of May 1906.
H. L. Ewing,
Clerk.

Fee \$5.00

J. Tennessee Smyth et al - - - - - Plaintiffs,
vs. In Chancery.
James Smyth et al, - - - - - Defendants.

This cause came on this day to be heard upon the papers formerly read herein, and the report of W.E. Thompson, L.W. Myers and W.N.G. Barron, Commissioners who partitioned the lands in the bill and proceedings mentioned, which report was duly filed on the 12th day of September, 1906, and was argued by counsel:

On Consideration of all of which, and there being no exceptions to said report, it is adjudged ordered and decreed that the said report of said Commissioners be, and the same is, hereby approved and confirmed; and it is further adjudged, ordered and decreed that Charles C. Smyth will take and hold in severalty, free from the claim of all other parties hereto Lot No. 1, containing $94\frac{1}{2}$ acres, assigned to him by said Commissioners in said partition, including the interest of Luther Turner, he having conveyed same to said Charles C. Smyth by proper deed; that J. Tennessee Smyth take and hold in severalty, free from the claims of all parties hereto Lot No. 2 containing 29 acres, laid off and assigned to him by said Commissioners in said partition; that E. M. Smyth (referred to heretofore in these proceedings as Elbert Smyth) take and hold in severalty, free from the claims of all other parties hereto Lot No. 4, containing 29 acres, laid off and assigned to him by said Commissioners in said partition; that Alpha Smyth Emma Smyth, Lillie Smyth Grover Smyth, Dewey Smyth and Esther Smyth, the children of James Smyth take and hold Lot No. 5, containing 18 acres, in severalty, free from the claims of all other parties hereto; that Elbert Turner take and hold in severalty, free from the claim of all other parties hereto, lots No. 6 and No. 3, containing 7 acres and $1\frac{1}{2}$ acres respectively, laid off and assigned to him by said Commissioners in said partition; and for a more particular description of each of the lots herein above mentioned reference is made to said report of said Commissioners;

And it is further adjudged, ordered and decreed that the par-

ties to this suit pay the costs of making said partition, including reasonable attorneys fees, in the following proportions, to-wit, J. Tennessee Smyth one-eleventh part thereof; Elbert Smyth two-elevenths part thereof; Chas. C. Smyth six and one-half-eleventh ($6\frac{1}{2}/11$) part thereof; ~~xxxx~~ Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth and Esther Smyth, children of James Smyth one-eleventh thereof; ~~xxxx~~ Elbert Turner one-half of one-eleventh part thereof.

And it is further adjudged, ordered and decreed that that Clerk of this Court as County Clerk will record the decree entered in this cause on the 25th day of May, 1906, ordering said partition, the said report of partition and plat therewith, and this decree, in the deed books in his office.

And there appearing nothing further to be done in this cause the same is stricken from the docket.

Virginia. Lee County, to-wit:
In the Clerk's office of Lee County.
on this the 15th day of November, 1906.
The foregoing decrees, Commissioners' report and plat were presented, and admitted to record.

Teste: H. C. I. Ewing, Clerk

965
J. Tennessee Smyth²
vs. { the Chy.
James Smyth
Final decree

Entered C. O. B. No. 8
page 215-vc

Recorded in Dred
Book 45, page 122
Examined Nov. 29, 1906
indexed.

Enter this decree
Sept 24, 1906.
H A W Skew

J. TENNESSEE SMYTH ET AL - - - - - Plaintiffs,

Vs.

In Chancery,

JAMES SMYTH ET AL - - - - - Defendants

This cause came on this day to heard upon the bill of the Complainant and exhibit therewith, the answer of Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth, Esther Smyth, Elbert Turner and Luthre Turner, infants under the age of 21 years, by Geo. P. Cridlin, their guardian ad litem, which answer was this day filed in open Court, and by leave thereof; and General replication to said answer, and was argued by Counsel;

And it appearing to the Court that process has been duly served upon the adult defendant, James Smyth for more than 15 days before the 1st day of this term of the Court, said bill is taken for confessed as to him;

On consideration of which the Court is of opinion that it was the intention of the testator to substitute James Smyth's children for the said James Smyth, and to give to them the share in said lands that their father would have taken had the testator died intestate

And it appearing to the Court that the whole of said lands in the bill mentioned are now owned by J. Tennessee Smyth, Charles C. Smyth, Elbert Smyth, the children of James Smyth, Elbert Turner and Luther Turner, and that the said Tennessee Smyth owns one share, the said Elbert Smyth two shares, the said Charles C. Smyth six shares and that the said Charles has a contract with Luther Turner for his one-half share, and that the said Elbert Turner owns the other half share; and it further appearing to the Court that said land is susceptible of partition, on consideration of all of which it is adjudged, ordered and decreed that W. E. Thompson, M. L. Dodson and L. W. Myers, who are appointed Commissioners for the purpose, do go upon said lands and partition the same among those entitled thereto as above shown in this decree, having due regard to quantity, quality and conveniences. They will lay off to J. Tennessee Smyth one-eleventh part thereof, to Elbert Smyth two-elevenths, to Charles C. Smyth Six-elevenths, and in laying off to the said Charles Smyth

said six-elevenths they will lay off adjoining it one-half of one-eleventh in right of his purchase from Luther Turner, which will make six and one-half elevenths that they will lay off for said Charles C. Smyth, to Elbert Turner one-half of one-eleventh, and to Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth and Esther Smyth, children James Smyth, the other one-eleventh. Said Commissioners will make a fair plat of said land and the partition thereof, they will report their action to a future term of this Court.

And this cause is continued.

Virginia,

At a Circuit Court continued and held for Lee County, at the Court-house thereof, on Monday, the 28th day of May, 1906.

J. Tennessee Smyth et al Plaintiffs

vs. In Chancery

James Smyth et al Defendants.

This cause came on this day to be heard upon the bill of the Complainants and exhibit therewith, the answer of Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth, Esther Smyth, Elbert Turner and Luther Turner, infants under the age of 21 years, by Geo. P. Cridlin, their guardian ad litem, which answer was this day filed in open Court, and by leave thereof; and General replication to said answer, and was argued by counsel.

And it appearing to the Court that process has been duly served upon the adult defendant, James Smyth for more than 15 days before the first day of this term of Court, said bill is taken for confessed as to him;

On consideration of which the Court is of opinion that it was the intention of the testator to substitute James Smyth's children for the said James Smyth, and to give to them the share in said lands that their father would have taken had the testator died intestate.

And it appearing to the Court that the whole of said lands in the bill mentioned are now owned by J. Tennessee Smyth, Charles C. Smyth, Elbert Smyth, the children of James Smyth, Elbert Turner and Luther Turner, and that the said Tennessee Smyth owns one share, the said Elbert Smyth two shares, the said Charles C. Smyth six shares and that the said Charles has a contract with Luther Turner for his one-half share; *and that the said Elbert Turner owns the other half share;* and it further appearing to the court that said land is susceptible of partition, on consideration of all of which it is adjudged, ordered and decreed that W. E. Thompson, M. L. Dodson and L. W. Myers, who are appointed commissioners for the purpose, to go upon said lands and partition the same among those entitled thereto as above

shown in this decree, having due regard to quantity, quality and conveniences. They will lay off to J. Tennessee Smyth one-eleventh part thereof, to Elbert Smyth two-elevenths, to Charles C. Smyth six-elevenths, and in laying off to the said Charles Smyth said six-elevenths they will lay off adjoining it one-half of one-eleventh in right of his purchase from Luther Turner, which will make six and one-half elevenths that they will ~~that they will~~ lay off for said Charles C. Smyth, to Elbert Turner one-half of one-eleventh, and to Alpha Smyth, Emma Smyth, Lillie Smyth, Grover Smyth, Dewey Smyth and Esther Smyth, children James Smyth, the other one-eleventh. Said commissioners will make a fair plat of said land and the partition thereof, they will report their action to a future term of this court. And this cause is continued.

*A. Copy Paste:
J. H. Ewing, Clerk,*

J. Tennessee Smyth et al
vs 1 Decree
James Smyth et al

Copy for return.

executed by
deleting

at one copy of
the within to
W. L. Thompson

L. M. Myers

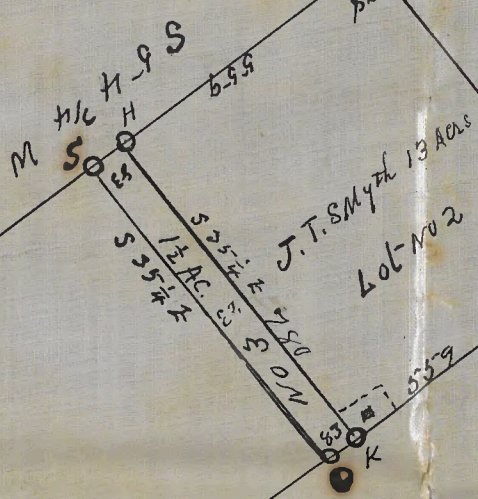
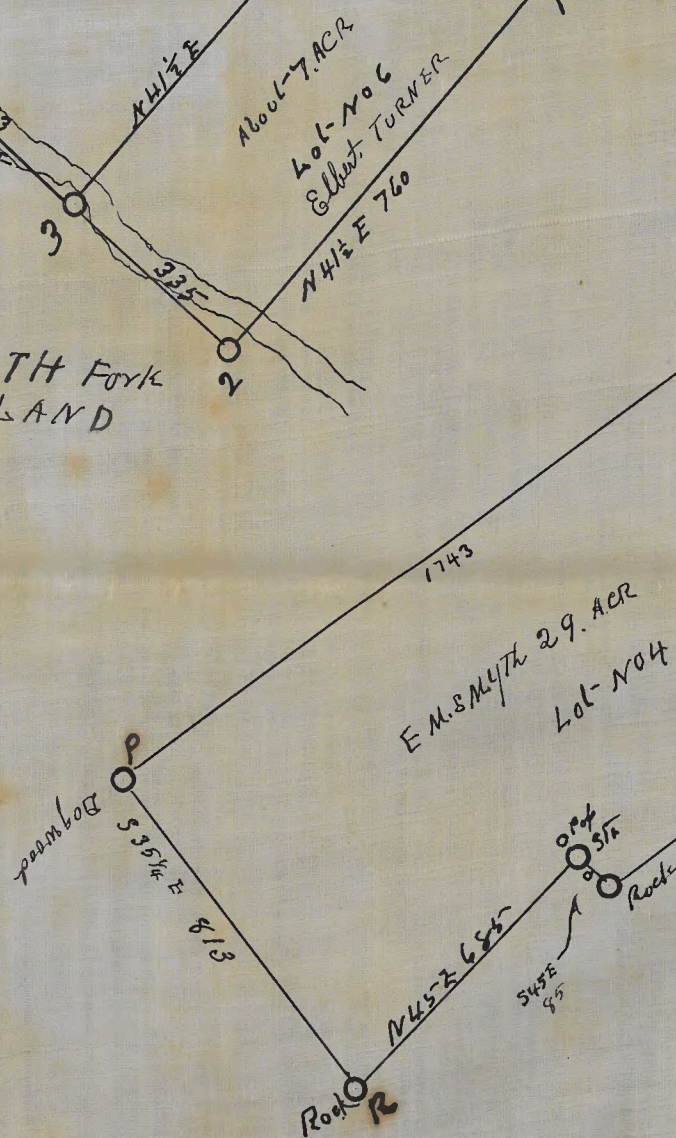
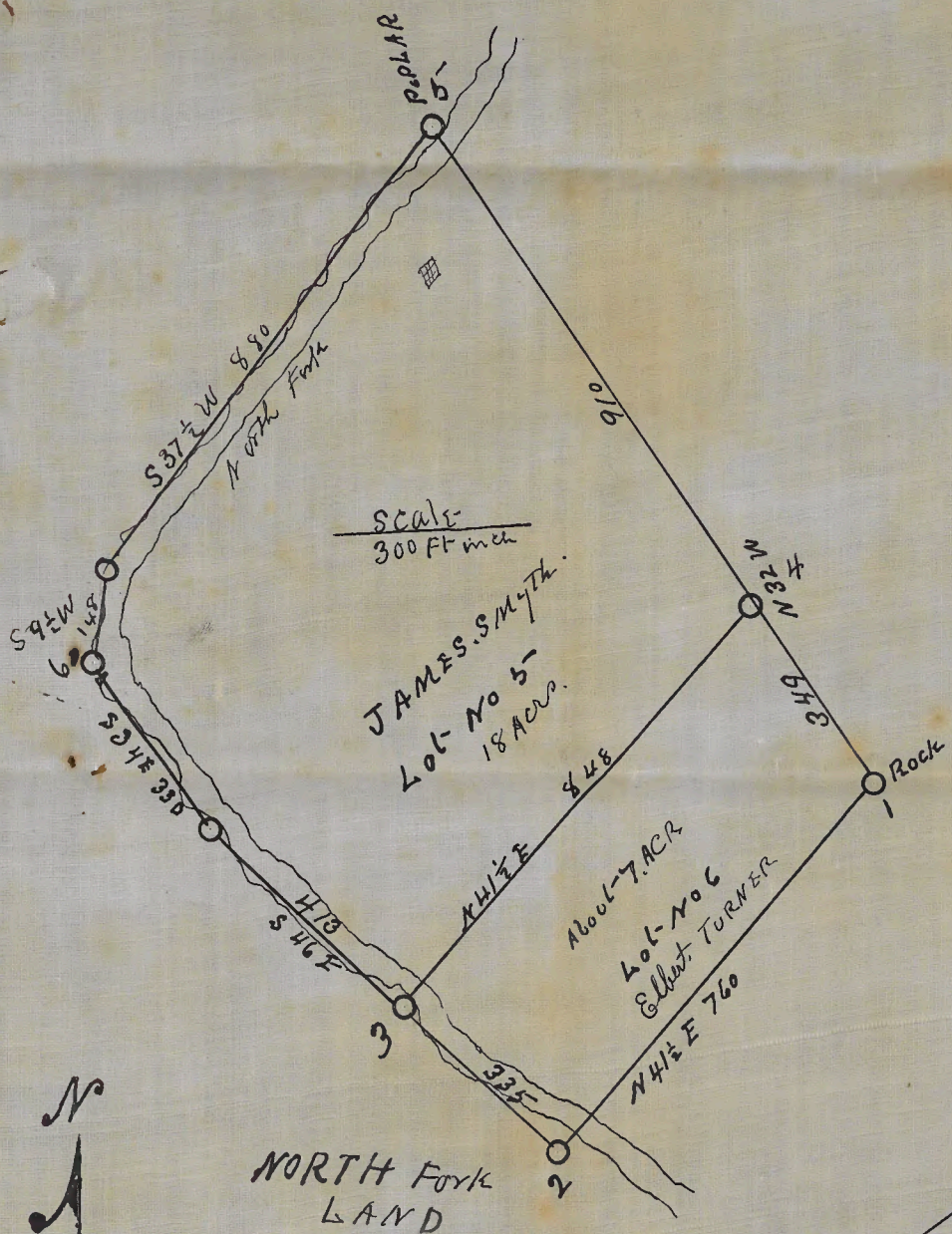
L. M. Dodson

this June 19, 1906

L. L. Hughes D.D.

for J. M. Ball

L. L. C.



PARTITION
of
DAVID SMYTHS Est.

W.E.T.
L.H.M.
W.N.G.B.



J. Tennessee Smyth
U.S.

3
} W. Chancery

James Smyth, Etob.

To Hon. H.A.W. Stearns Circuit-Court-
Judge for Lee Co.

At a circuit-court-held for
Lee Co. at the Court House there of
on the 28th day of May 1906.
in the above styled Cause. it- Was
ordered that W.E. Thompson M.D. Dodson and
L.W. Myers be appointed Commissioners
to go up on the Lands of David Smyth
Dec. and Layoff and assign to those
intitled thereto according to said Decree
filed in this Cause.

Yours under Signed Commissioners
beg leave to Report- That on the Day of
July 1906 We did go up on said Lands
M.D. Dodson who was one of the
Commissioners by a reasonable Excuse
could not act and W.R.E. Barron
who was agreed upon by all parties
Present acted in his stead and
after being duly Sworn.

We made a Survey of the David
Smyth Home place and found it-
to contain one hundred & thirty eight-
acres we Layed off and assigned
to Charles C. Smyth $94\frac{1}{2}$ acres of said Est-
which we think is six and one half Elevenths
in Value the said Charles C. Smyth having
a Bond for $\frac{1}{2}$ Eleventh from Luther Turner.

But if said Luther Turner fails to make a Deed
to the said Charles C. Smyth we think 7 acres
along & Parallel to the Line running on
the West Side of the $94\frac{1}{2}$ acre Tract-
& Parallel there to from Hickory & Spanish oak

2

S $15\frac{1}{2}$ E 1560 feet ¹ So as to make Seven acres
will be considered as Luther Turners one half share
shown on Plot By Dotted Lines.

The Lot No 1 assigned to Charles C. Smyth is
Bounded as follows.

Beginning at a Poplar on top of the Ridge
thence N $35\frac{1}{2}$ W. 973 feet to a stake on
Gilleys Line With the Same S $58\frac{1}{2}$ W
1348 feet to a Spanish Oak & Hickory Stump
at C. S $15\frac{1}{2}$ E 1560 feet to a Poplar & Hickory
old marked Corners. N $54\frac{3}{4}$ E 88 feet to
a stake By a Large Poplar. S $36\frac{3}{4}$ E 1520 feet
to a stake on L. W. Myers Line with said
Line N 55 E 661 feet to a Poplar Stump
N $9\frac{1}{2}$ E 125 feet to a white oak N $8\frac{1}{4}$ W
2200 feet to the Beginning containing $94\frac{1}{2}$
acres including the 7 acres mentioned
above as the Luther Turner share.

A B C D E F G A.

Lot No 2. Was Layed off and assigned
J. Tennessee Smyth
Bounded as follows.

Beginning at the Poplar & Hickory corner to
Lot No 1 S $54\frac{3}{4}$ W. 559 feet to a stake
S $35\frac{1}{4}$ E 780 feet to a stake on the South
Boundary Line with the Same N 55 E 559 ft-
to to Sawwood & Chestnut. L S $36\frac{3}{4}$ 736 ft-
to a Poplar & White Oak Corner to L W Myers.
N 55 E 94 feet to a stake Corner to Lot No 1 with
a line of the Same. N $36\frac{3}{4}$ 1520 feet to a stake
By a Poplar. S $54\frac{3}{4}$ W 88 feet to the Beginning
Containing Thirteen acres including about
 $\frac{1}{2}$ acre School Lot- which if it- is abandoned
for school or church Purpose is to go to this
Share of Land. This we think is one eleventh
in Value as the entire Lot Except- about

one acre is Timber Land. See D H K L M F E D
Lot No 4

Was Layed off and assigned to E. M. Smyth Bounded as follows. Beginning at a Dog Wood the ^NWest corner of David Smyth Land shown on Plot at P S $35\frac{1}{4}^{\circ}$ E 813 feet to a Rock. Corner R N 45° E 685 feet to a Poplar & White oak stump claimed to be the original corner. S 45° E 85 feet to a Rock.

N 55° E about 1095 feet to a Stake corner to Lot No 3 which is 83 feet from J. Temmerson Smyth's corner. Thence N $35\frac{1}{4}^{\circ}$ W 780 feet to a stake 83 feet from J. T. Smyth's N.W. corner. on the North Boundary Line S $54\frac{3}{4}^{\circ}$ W. about 1743 feet to the Beginning containing 29 Acres. which we think is $\frac{2}{11}$ in Value. Fig. P R O S

Lot 5 which is assigned to James Smyth ~~children~~ ^{children} Lying on the North Fork of Powell's River adjoining M. R. Gilley Bounded as follows Beginning on the North Bank of the North Fork on a Poplar. Thence S $37\frac{1}{2}^{\circ}$ W. 880 feet to a stake S $9\frac{1}{2}^{\circ}$ W 148 feet to the mouth of M. R. Gilley's Spring Branch. S 34° E 330 feet to a Rock S 46° E 413 feet to a Stake N $41\frac{1}{2}^{\circ}$ E 848 feet crossing North fork & Public Road to a Stake on J. M. Smyth's Line N 32° W 910 feet to the Beginning containing 18 acres including North fork This we think is one Eleventh in Value of said Est. Fig 5.6.3.4

Lot No 6 which is a part of the North Fork Boundary was assigned to Albert Turner. Bounded as follows Beginning at a Rock on North Side of the Public Road a corner to J. M. Smyth with his Line S $41\frac{1}{2}^{\circ}$ W 760 feet to a maple on the North Side of the North fork

4

Thence N 46 W 335 feet to a stake
 Corner to Lot No 5 with a line of the same
 N 41 1/2 E 848 feet to a stake on J. M. Smyth's line
 Thence Leaving Lot No 5 S 32 E 349 feet to the
 Beginning containing about 7 acres. Fig 1, 2, 3, 4

Also Lot No 3 a strip of land lying between
 Lot No 2 and Lot No 4 was assigned
 to Elbert Turner. Bounded as follows

Beginning at stake shown on Plot of H the
 North West corner to Lot No ~~2~~ 2. S. 54 3/4 W
 83 ft- to a stake corner to Lot No 4
 with a line of the same. S 35 1/4 E. 780 feet to
 a stake on the Southern line with the same
 N 55 E 83 feet to a stake corner to Lot No 2
 with the same. N 35 1/4 W. 780 feet to the Beginning
 containing 1 1/2 acres. This Lot No 3 & the Lot-
 No 6 on the North Fork we think is one half
 of one Eleventh in value of said Est.

Fig H. S. O. R.

all of which is respectfully
 Submitted

W. E. Thompson Surveyor & Comr

L. W. Myers. Comr

W. N. G. Barrens Comr.

This Sept 6/1906.

J. Tennessee Smyth
VS. James Smyth & EB.

Report of Com.

Com. Cash-
W.E. Thompson $3\frac{1}{2}$ - 8.75
L.W. MYERS 3 6.00
W.M.B. Barnes 1 2.00
\$16.75-

Filed Sept. 12, 1906.

H.C.D. Ewing
Clerk.

Recorded in Dead
Book, 46, page 70
Examined Nov 20, 1906
Undaxed.

- I David Smyth of the County of Lee, and State of Virginia being of sound mind and memory and considering the uncertainty of this frail and transitory life, do therefore make ordain and publish & declare this to be my last will and testament that is to say, First, after all my lawful debts are paid, and discharged, the residue of my estate real and personal, I give, bequeath, and dispose of as follows to wit, To my son David Smyth One heifer, and to my son Charles one heifer and one hog and To my Daughter Laura R Smyth one horse and saddle, and one heifer, and one hog, Whenever they shall arrive at the age of twenty one years old; To my Beloved wife Margaret Smyth the rest or remain of my entire effects Real and Personal during her natural lifetime or widowhood, thereafter, To James D' Smyths childred being my grand children) an equal part with all the rest of my children among all of whom I wish it equally divided share and share alike between them. In witness whereof I have hereunto subscribed my name and affixed my seal the fourteenth day of July 1893

Witness

John A. Orr
Wm T. Orr

David Smyth

(Seal)

Virginia

At a County Court begun and held for Lee county at the Court house thereof on Monday April 16th 1894.

The last will and testament of David Smyth was this day produced in Court, and the said will was proved by the oath of John A. Orr, one of the subscribing witnesses therto, who also proved the execution of the said will by the testator in his presence, and in the presence of William T. Orr the other subscribing witness thereto, and that they signed said will as attesting witnesses thereto, at the request of the testator and in his presence, they all three being there

present together, at the time of the signing of the same, Thereup-
on the said will is ordered to be recorded.

A Copy- Teste: S. V. F. Richmond Clerk

A. Copy Teste: H. T. Ewing, Clerk.

Las Will and
Testament
of
David Smyth

"Exhibit 1"
With Bill

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon *James Smyth, and Alpha*
Smyth, Emma Smyth, Lillie Smyth Grover Smyth,
Devey Smyth, and — Smyth Children of James
Smith and Elbert Turner and Luther Turner

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on
the *1st* Monday in *May*, 190*6*, to answer a bill in chancery exhibited against *them*
by J. Tennessee Smyth, Elbert Smyth, and
Chas C. Smyth

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *18th*
day of *April*, 190*6*, and 1 *30th* year of the Commonwealth.

A Copy, Teste:

H. C. T. Ewing, Clerk.

_____, Clerk.

executed by delivering a true copy
of the within to James Smyth
this April the 21. 1906

J. F. Hughes D. S for
Wm. Ball S & C

April 21 1906

James Smyth
et al

VS

}

SUBPOENA
IN
CHANCERY.

James Smyth et al

Wm. Ball S & C
p. q

To Lot May Rules.

See Enquiry Court.
1906.